

REMARKS/ARGUMENTS

Claims 1-11, 13, 15, 16, 18, 19, 21-30, 32, 34-37 and 39-46 are pending in this Application. Claims 24-30, 32, 34-40 are withdrawn from consideration. By this Amendment, claims 1, 21, 24 and 41-43 are amended, and claims 44-46 are added. The amendments and added claims introduce no new matter. Claims 14, 20 and 38 are canceled without prejudice to, or disclaimer of, the subject matter recited in those claims.

Reconsideration of the application based on the above amendments and the following remarks is respectfully requested.

Interview with the Examiners

Applicants appreciate the courtesies extended to Applicants' representative by Examiners Pani and Hindenburg during the June 3, 2010 telephone interview with the Examiners. Applicants summary of the substance of the interview is contained in the following remarks.

Rejections Under 35 U.S.C. §112, First Paragraph

The Office Action rejects claims 1-11, 13, 15, 16 and 18-23 under 35 U.S.C. §112, first paragraph. This rejection is respectfully traversed.

Without conceding the propriety of the rejection, and solely to advance prosecution of this application, claim 1 is amended to obviate the rejection. As discussed during the June 3, 2010 interview, Applicants understand that the amendments are sufficient to overcome the asserted rejection under §112, first paragraph. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

In the interest of advancing prosecution, claims 24 and 43 are amended in like manner.

Rejections Under 35 U.S.C. §102

The Office Action rejects claims 1-9, 12-16, 18-23 42 and 43 under 35 U.S.C. §102(e) over U.S. Patent Application Publication No.2002/0107649 to Takiguchi et al. (hereinafter "Takiguchi"). This rejection is respectfully traversed.

Without conceding the propriety of the rejection, and solely to advance prosecution of this application, the independent claims are amended to clarify relevant features. Applicants maintain the previous arguments regarding the application of Takiguchi to the subject matter of the pending claims. Applicants further submit that the pending claims, as amended, are allowable over Takiguchi for at least the following additional reasons.

Claim 1 recites, among other features:

a sensor module configured to touch an upper surface of a floor, the sensor module configured to while touching the upper surface of the floor detect at least one of floor acceleration, floor vibration, and floor deflection and to provide at least one of an acceleration, vibration, and deflection signal, wherein the subject can walk on the upper surface of the floor in proximity to said sensor module; and

a processor module that is configured to analyze the acceleration, vibration, and deflection signal and to determine gait characteristics based on the signal,

wherein, the processor is configured to determine the gait characteristics based on the at least one signal from a single sensor module; and

the processor is configured to recognize that data is consistent with the fall of a human being by distinguishing between steps of a human being and a fall of a human being.

Touching the Upper Surface of the Floor

The Office Action asserts that Takiguchi allegedly teaches a sensor module configured to touch an upper surface of a floor. However, Takiguchi consistently, and exclusively, describes the "invention" as "a device to be placed on the body of a user or on the clothes the user is wearing." Paragraph [0027] of Takiguchi. Takiguchi goes on to state that "[th]e device may be a wristwatch, a wristwatch-type pedometer, or the like." *Id.* Such features do not reasonably correspond to, for example, a sensor module configured to while touching the

upper surface of the floor detect at least one of floor acceleration, floor vibration, and floor deflection and to provide at least one of an acceleration, vibration, and deflection signal.

Claims 41 and 42 are likewise allowable at least for the inclusion of similar features to those discussed above. Accordingly, reconsideration and withdrawal of the rejection of claims 1, 41 and 42 are respectfully requested.

These arguments were discussed during the June 3, 2010 interview with the Examiners. The Examiners agreed that further review would be appropriate in light of the claim amendments and arguments presented. Applicants appreciate this agreement by the Examiners.

Recognizing That Data Is Consistent With The Fall Of A Human Being

Additionally, Applicants submit that Takiguchi does not teach a processor configured to recognize that data is consistent with the fall of a human being by distinguishing between steps of a human being and a fall of a human being, as recited in claim 1, and similarly recited in claim 41. In this regard, although the Office Action asserts that frequency graphs depicted in Figures 2-5 of Takiguchi allegedly disclose a processor configured to distinguish between steps of a human being and a fall of a human being, and that “these frequency graphs would distinguish between steps and a fall in the sense that the data from the two occurrences would be displayed differently”, merely displaying a frequency spectrum of sound vibrations does not teach the feature of a processor configured to recognize that data is consistent with the fall of a human being by distinguishing between steps of a human being and a fall of a human being.

Accordingly, reconsideration and withdrawal of the rejection of claims 1 and 41 are respectfully requested.

This argument was discussed during the June 3, 2010 interview with the Examiners. The Examiners agreed that further review would be appropriate in light of the relevant claim amendments and arguments presented. Applicants appreciate this agreement by the Examiners.

Walking Down Stairs Does Not Correspond to the Claimed Fall of a Human being

The Office Action also asserts that “alternatively, walking down stairs is a controlled fall and is distinguished from regular steps.” However, Applicants maintain, among other arguments, that one of ordinary skill in the art would not interpret walking down stairs as corresponding to “a fall of a human being.” Simply put, if a subject were to “walk” down stairs, no reasonable English-speaking observer would describe that as “falling” down the stairs, which has a significantly different, and readily understood, meaning. Moreover, as known to those of skill in the art of home and clinical monitoring systems, and as described in Applicants’ disclosure, a “fall” is a potentially dangerous situation that may require medical care, particularly for elderly patients, none of which would be implicated by a subject “walking” down the stairs.

As stated in MPEP §2111, the claims must be given their broadest reasonable interpretation consistent with the specification. In view of the foregoing, Applicants submit that the interpretation of the Office Action, which equates walking down stairs with the fall of a human being, is (1) objectively unreasonable based on the ordinary and customary meaning of these terms, and (2) inconsistent with the specification. Accordingly, it is unreasonable to interpret disclosures regarding walking down stairs as corresponding to features directed to distinguishing a fall of a human being.

In view of the foregoing, Applicants submit that the applied reference does not teach each and every feature recited, for example, in claims 1 and 41. Accordingly, reconsideration and withdrawal of the rejection of claims 1 and 41 are respectfully requested.

This argument was discussed during the June 3, 2010 interview with the Examiners, however, no agreement was reached.

Rejections Under 35 U.S.C. §103

The Office Action rejects claim 10 under 35 U.S.C. §103(a) over Takiguchi in view of U.S. Patent No. 6,006,165 to Okada; rejects claim 11 under 35 U.S.C. §103(a) over Takiguchi in view of U.S. Patent No. 5,831,937 to Weir et al. (hereinafter “Weir”); and rejects claim 41 under U.S.C. §103(a) over Takiguchi in view of U.S. Patent No. 5,081,297 to Lebel et al. (hereinafter “Lebel”). These rejections are respectfully traversed.

None of the above references are applied in a manner to overcome the identified shortfalls of Takiguchi with respect to the independent claims. As such, the remaining claims are believed to be allowable for at least the respective dependence of these claims, directly or indirectly, on an allowable base claim, as well as for the separately patentable features that each of those claims recites.

Accordingly, reconsideration and withdrawal of the rejections are respectfully requested.

Added Claims 44-46

Claim 44 recites, in pertinent part, wherein the processor unit is configured to identify the human body fall based on filtering out a frequency corresponding to at least one of walking modes and dropped objects. Claims 45 and 46 recite similar features. Support for such features may be found, for example, on page 12 of Applicants' disclosure, as filed.

As discussed during the June 3, 2010 interview, the applied references do not teach, nor can they reasonably be considered to have suggested, such features. The Examiners agreed that further review of such features would be appropriate. Applicants appreciate this agreement by the Examiners.

Rejoinder of Claims 24-30, 32, 34-37, 39 and 40

Method claims 24-30, 32, 34-37, 39 and 40 are currently withdrawn in response to the previously issued restriction requirement. Independent claim 24 has been amended in similar manner to claim 41. Accordingly, claim 24 is understood to otherwise require the allowable features of claim 41 as discussed above, and a request for the rejoinder of claim 24, and dependent claims 25-30, 32, 34-37, 39 and 40, is hereby respectfully made.

If claims 24-30, 32, 34-37, 39 and 40 are not rejoined in this application by the Examiner, this formal request for rejoinder preserves Applicants' rights to file one or more divisional applications for said claims under 35 U.S.C. §121, and precludes the U.S. Patent and Trademark Office from issuing a double patenting rejection of said claims over the claims of this application.

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Reply to Office Action of May 11, 2010

PATENT
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This formal request for rejoinder stands for the entire pendencies of this case and all subsequent divisional cases.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 202-481-9900.

The Commissioner is authorized to charge any fees due or credit any overpayment to the Deposit Account of Townsend and Townsend and Crew LLP, Deposit Account No. 20-1430

Respectfully submitted,

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